

REMARKS

In response to the final Office Action of January 6, 2011, independent claim 1 has been amended in a manner which is believed to particularly point out and distinctly claim the invention in view of the cited art. Support for the amendment is found in the original application as filed, including Figures 1 and 2 and paragraph [0039] of the published US application.

Claim 18 has also been newly presented. Support for this claim can be found in Figure 3 and the accompanying description at paragraphs [0040]-[0041], as well as paragraphs [0036]-[0039]. In view of this new claim, dependent claim 11 has been amended to be dependent on claim 18.

Drawings

At section 1, the drawings are objected to under 37 CFR 1.83(a). Specifically, with respect to claims 11, 13, and 14, it is stated that the "slug", in combination with the tapered tip of claim 1, is not shown in the drawings.

Claim 11 has been amended to be dependent on new claim 18. Claims 13 and 14 depend from claim 11 and are therefore also ultimately dependent on claim 18. Because claim 18 does not recite "a tapered tip" as in claim 1, it is respectfully requested that the objection is no longer applicable and should be withdrawn.

Claim Rejections - 35 USC §103

At section 3, claims 1, 3, 6, 9, 11, 13, 14, and 17 are rejected under 35 USC §103(a) as being unpatentable in view of US patent 5,013,800, Brunet, in view of US patent application publication 2005/0211241, Anderson, et al (hereinafter Anderson).

With respect to claim 1, the Office asserts that Brunet shows a dispenser for a gaseous, gas borne, or droplet substance comprising the elements recited in claim 1, except that Brunet fails to disclose that the reservoir is translucent or transparent and is further silent with respect to the material of the container.

Claim 1 has been amended to specify that during use the medicament flows away from the minor portion of the reservoir. This amendment further clarifies that only on inversion of the dispenser can the user observe the level of substance in the minor portion.

Applicant respectfully submits that the amended claims are inventive over each of the cited references for the reasons set out below.

The key difference between the dispenser now claimed and those of the references is the configuration in which the dispenser is used. This difference means that during use of the dispenser in the present application, the medicament flows away from the tapered tip towards the release valve. In other words, the use position is valve-down, with the minor portion above the release valve. This means that when the dispenser is inverted to the valve-up position, the medicament collects in the tapered tip to allow easy estimation of the number of doses remaining in the reservoir as the substance is close to exhaustion (see Figures 1 and 2). Consequently, users know when they are likely to need a new dispenser, when to carry a replacement, etc. Additionally, as use of the dispenser and medicament continues, the tapered tip causes the level of the medicament to decrease progressively faster giving the user an indication of when a fresh dispenser will soon be required.

In contrast, the dispensers in the cited references are designed to be used in the valve-up position, with the minor portion below the release valve. This means that during use, the medicament stays in the portion of the dispenser opposite the valve (i.e., the minor portion) and when inverted to the valve-down position, the medicament will collect in the major portion. This is completely the opposite configuration to the dispenser in amended claim 1.

On page 5, of the Office Action, the Office has once again annotated Figure 2 of Brunet to assert that the can 2 has both a major portion (A) and a minor portion (B) in the form of a tapered tip at the opposite end of the source from the release valve. As acknowledged by the Office, however, Brunet fails to disclose that the reservoir is translucent or transparent. More importantly, Brunet also fails to disclose that during

use of the dispenser in its valve-down position, the medicament flows away from the minor portion. Additionally, Brunet also fails to disclose that a user can invert the dispenser to a valve-up position to observe the level of medicament in the minor portion of the reservoir. Rather, the dispenser of Brunet is used in a valve-up position with the medicament remaining in the minor portion during use of the dispenser, and if inverted, the medicament flows into the major portion.

The fact that the device of Brunet is used in the opposite configuration to the dispenser of the present invention is clear from the teaching at column 2, lines 42-46 of Brunet which states:

“...cylinder 6 is an integral part of the pusher 5. When a vertical force is directed downwards (as shown in FIG. 1) on the pusher 5 by any means Whatsoever, the cylinder 6 imparts downwards motion to the valve rod 4. The rod is pushed into the valve body 3 of the spray device...”

If the dispenser of Brunet was used in the valve-down position as in the present invention, the vertical force applied on/to the pusher 5 in order to dispense a dose would be directed upwards. The vertical force applied to the pusher 5 shown in Figure 1 is, however, described as being directed downwards. A person of ordinary skill in the art reading Brunet is therefore taught away from arriving at a dispenser as now claimed.

Furthermore, Anderson also does not disclose or suggest a dispenser as now claimed. In the Office Action at pages 3-4, the Office asserts Anderson discloses that the reservoir is of transparent or translucent material. However, Anderson, like Brunet, fails to disclose that during use of its dispenser, the medicament flows away from the minor portion and that a user can invert its dispenser to observe the level of substance in the minor portion. Rather, like Brunet, the dispenser of Anderson is designed to be used in a valve-up position with the medicament remaining in the minor portion of the dispenser during use thereof, and if inverted, the medicament flows into the major portion of the reservoir.

The fact that the device of Anderson is designed to be used in a valve-up position is clear from Figures 4 and 5. Figure 4 shows how the delivery tube 32

extends along the entire length of the container. Hence, if the device of Anderson was used in the valve-down position, little or no medicament would be released. This also follows from the teaching at page 4, paragraph [0099] of Anderson that the tapered tip of its reservoir is “advantageous in that it allows the pick-up tube 32 to collect, without special orientation of the container, more fluid than if a flat-bottomed container is used” (emphasis added). Thus, the working of Anderson’s device depends on it being used in the valve-up position with the medicament remaining in the tapered tip.

Figure 5 of Anderson shows the device in use in the valve-up position. It is then described on page 5, paragraph [0107] how in use the container 30 is moved towards the nozzle 11 as indicated by the arrow “M” in Figure 5. The container is moved upwards because it is used in a valve-up position. This configuration of Anderson’s devices is also seen from the teaching at its paragraph [0001] wherein it is stated that its devices are designed for use as nasal inhalers, which are specifically designed to be operated in the valve-up position because of the required orientation of the inhaler when delivering a dose into the nasal cavity.

Because neither Anderson, nor Brunet disclose a dispenser as now claimed, even if a person of ordinary skill in the art were to combine their teachings, applicant submits that the person would not arrive at the current invention. Rather, a person of ordinary skill in the art would design a nasal inhaler for use in the valve-up position with a transparent reservoir. This is distinct from the invention of claim 1 as amended.

Applicant respectfully submits that a person of ordinary skill in the art reading Anderson would not be motivated to make the modification necessary to arrive at the dispenser of amended claim 1. As discussed above, nasal inhalers such as those disclosed in Anderson, are designed to be used in the valve-up position. The configuration of Anderson’s device teaches away from the claimed invention. Absent any other teaching or suggestion in either Anderson or Brunet of the advantages associated with the configuration of the dispenser in the present invention, a person of ordinary skill in the art would be disinclined to make such modifications.

Therefore, it is respectfully submitted that claim 1, as amended, is distinguished over Brunet in view of Anderson.

For similar reasons, it is respectfully submitted that new claim 18 is also distinguished over the cited references and is in allowable form.


Dependent claims 3, 6, 9, 11, 13, 14, and 17 are also believed to be distinguished over Brunet in view of Anderson at least in view of their ultimate dependencies from amended claim 1.

Similarly, the rejection of dependent claims 7 and 8 and dependent claim 10 at section 6 of the Action in view of Brunet, Anderson, and additional art, is also respectfully refuted at least in view of the ultimate dependency of these dependent claims from amended claim 1.

It is therefore respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

The Commissioner is hereby authorized to charge to deposit account 23-0442 any fee deficiency required to submit this paper.

Respectfully submitted,



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